

BEFORE THE MISSISSIPPI ETHICS COMMISSION

KATE ROYALS

COMPLAINANT

VS.

PUBLIC RECORDS CASE NO. R-21-013

CITY OF FOREST, MISSISSIPPI

RESPONDENT

FINAL ORDER

This matter came before the Mississippi Ethics Commission through a Public Records Complaint filed by Kate Royals against the City of Forest, Mississippi (the “city”). The city filed a response to the complaint. The Ethics Commission has jurisdiction over this matter pursuant to Section 25-61-13, Miss. Code of 1972. In accordance with Rule 5.6, Rules of the Mississippi Ethics Commission, the hearing officer prepared and presented a Preliminary Report and Recommendation to the Ethics Commission at its regular meeting on September 3, 2021. The respondent did not object to the Preliminary Report and Recommendation and has thereby waived a right to a hearing on the merits. Accordingly, the hearing officer enters this Final Order in accordance with Rule 5.6, Rules of the Mississippi Ethics Commission.

I. FINDINGS OF FACT

1.1 Kate Royals alleges that the fees charged by the City of Forest, Mississippi for public records requests violate the Public Records Act. In her complaint, she attached copies of three invoices for records requests she made to the City of Forest Police Department and City of Forest Municipal Court. These invoices reflect estimates for researching a public records request at \$25 per hour; copying at \$0.25 per page; redaction at \$0.25 per page and postage at \$0.55 per stamp.

1.2 Ms. Royals paid \$113.50 invoice for municipal court records (reflecting 4 hours of research, 27 pages of copies and 27 pages of redaction); and a \$144.50 invoice for police records (reflecting 3 hours of research, 139 pages of copies and 139 pages of redaction.) Ms. Royals declined to pay another invoice for municipal court records, (one totaling \$50.20, for 1 hour of research, 26 pages of copies, 26 pages of redaction and 4 stamps). She states that the city originally provided her this invoice with a research rate of \$50 per hour, but adjusted the invoice to reflect a research rate of \$25 per hour after she questioned the rate.

1.3 Ms. Royals states that the city’s charges are excessive and violate the Public Records Act, since they are charging a separate per page redaction fee from the copy fee, as well as collecting for searches performed by the Forest City Clerk, whose annual salary equates to an hourly rate of about \$17 per hour. In its response, the city denies that the fees charged to Ms. Royals for responding to her records requests violated the Public Records Act and that the rates charged were reasonable.

1.4 The undersigned hearing officer requested additional information from the city regarding the hourly rate for the person who searched for and redacted the public records, the amount of time spent at these tasks, and the number of pages provided to the complainant. The

city states that for the public records request for municipal court records, the hourly rate for the person searching and redacting the records was \$17.16 per hour; that 4 hours were spent searching for records, 1 hour was spent redacting records and 27 pages were produced. For the police records, the hourly rate for the person searching and redacting the records was \$26.91 per hour; that 3 hours were spent searching for records, 1 hour was spent redacting record and 139 pages were produced.

II. CONCLUSIONS OF LAW

2.1 The Mississippi Public Records Act of 1983 (the “Act”), codified at Section 25-61-1, et seq., Miss. Code of 1972, provides that public records shall be available for inspection or copying by any person unless a statute or court decision “specifically declares” a public record to be confidential, privileged, or exempt. Section 25-61-2 and Section 25-61-11, Miss. Code of 1972. “If any public record contains material which is not exempted under this chapter, the public agency shall redact the exempted and make the nonexempted material available for examination.” Section 25-61-5(2).

2.2 A public body “may establish and collect fees reasonably calculated to reimburse it for, and in no case to exceed, the actual cost of searching, reviewing and/or duplicating and, if applicable, mailing copies of public records.” Section 25-61-7(1). The public body is also “entitled to charge a reasonable fee for the redaction of any exempted material, not to exceed the agency's actual cost.” Section 25-61-5(2). “Any staff time or contractual services included in actual cost shall be at the pay scale of the lowest level employee or contractor competent to respond to the request.” *Id.* Such fees shall be collected by the public body in advance of complying with the request.” *Id.* This pre-payment, when based upon a reasonable estimate of the actual cost, is a deposit. See Comment 8.4(1), Mississippi Model Public Records Rules. Upon payment of the deposit, if the actual time and cost to process a public records request is less than what was estimated, a public body would be required to refund that excess portion of the deposit.

2.3 A public body may not charge more than the “actual cost” of providing access to public records. Any attempt by a public body to impose fees exceeding actual costs reasonably incurred constitutes a willful and knowing denial of access to public records that warrants the imposition of a civil penalty and the award of attorney fees and costs against the public official charging the excessive cost. Harrison County Development Commission v. Kinney, 920 So. 2d 497, 503 (Miss. App. 2006). See also Comment 8.5(4), Mississippi Model Public Records Rules. The same can be said for an estimate that is so high that it does not reasonably reflect the actual costs the public body expects to incur in responding to a records request.

2.4 The municipal court and police records maintained by the city’s police department and municipal court are public records, and the city must provide reasonable access to these files. Accordingly, the estimated \$25 hourly rate for searching records and a \$0.25 per page fee to redact may be reasonable, so long as the total fee does not exceed the actual cost of the copying, and search and review, calculated using the pay scale of the lowest level employee or contractor competent to respond to the request.

2.5 However, for paper copies of public records, the Ethics Commission has stated in Rule 8 of the Model Public Records Rules that a public body should provide calculations and reasoning for its charges, if charging more than \$0.15 per page. Specifically, if a public body

“attempts to charge more than fifteen cents per page for photocopies, a public body should establish a statement of the actual cost of the copies it provides, which should include a statement of the factors and the manner used to determine the actual per page cost. ... A price list with no analysis is insufficient. A public body's calculations and reasoning need not be elaborate but should be detailed enough to allow a requestor, the Ethics Commission or a court to determine if the public body has properly calculated its copying charges. ... If a public body opts for the default copying charge of fifteen cents per page, it need not calculate its actual costs” Comment 8.1(1), Mississippi Model Public Records Rules. Since the city did not provide any calculations to support a \$0.25 per page copying charge, the default copying charge of \$0.15 per page will be applied to calculating the city’s actual cost of providing public records.

2.6 In this case, it appears that Ms. Royals paid \$113.50 for municipal court records, but the actual cost of providing these records should have been \$89.85. This lower amount is calculated at 5 hours of research and redaction at \$17.16 per hour and 27 pages at \$0.15 per page. Additionally, it appears that Ms. Royals paid \$144.50 for police records, but the actual cost of these records should have been \$128.49 (4 hours of research and redaction and 139 pages at \$0.15 per page). While the invoices were reasonable estimates of the costs of producing public records, they exceeded the actual cost of producing the records, and as a result, the city owes Ms. Royals a refund of \$39.66.

III. CONCLUSION

WHEREFORE, IT IS HEREBY ORDERED as follows:

3.1 The Ethics Commission finds that the City of Forest violated Section 25-61-5(2) and Section 25-61-7(1) of the Mississippi Public Records Act by charging more than the actual cost of searching, reviewing, redacting and duplicating the requested public records.

3.2 The Ethics Commission orders the City of Forest to refund the complainant, Kate Royals, \$39.66, that was collected in excess of the actual cost of producing public records for two public records requests.

3.3 The Ethics Commission orders the City of Forest to strictly comply with the Public Records Act.

SO ORDERED, this the 5th day of November, 2021.

SONIA SHURDEN, Hearing Officer
Mississippi Ethics Commission